

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF OHIO
3 AT DAYTON

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5 UNITED STATES OF AMERICA,)
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 Plaintiff,) CASE NO. 3:18-cr-186-TMR
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 -vs-)
)-----)
 BRIAN HIGGINS,) MOTION FOR NEW
))
 Defendant.))
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10 TRANSCRIPT OF TELEPHONIC PROCEEDINGS
11 BEFORE THE HONORABLE **THOMAS M. ROSE**,
12 UNITED STATES DISTRICT JUDGE, PRESIDING
13 MONDAY, March 30, 2020
14 DAYTON, OH

15 **APPEARANCES:**

16 **For the Plaintiff:** **BRENT TABACCHI, ESQ.**
17 U.S. Attorney's Office
18 200 W. Second Street
19 Room 602
20 Dayton, OH 45402

21 **For the Defendant:** **ANTHONY R. CICERO, ESQ.**
22 Attorney at Law
23 500 East Fifth Street
24 Dayton, OH 45402

25 **Also Present:** **Tamara Sack, Esq.**

Proceedings recorded by mechanical stenography,
transcript produced by computer.

Mary A. Schweinhagen, RDR, CRR
Federal Official Court Reporter
200 West Second Street
Dayton, OH 45402
*** *** *** **

09:40:16 1 P-R-O-C-E-E-D-I-N-G-S 10:38 A.M.

09:40:16 2 THE COURT: Counsel, good morning.

09:40:22 3 MS. SACK: Good morning, Judge.

09:40:25 4 THE COURT: Mr. Higgins, good morning.

09:40:27 5 THE DEFENDANT: Good morning, sir.

09:40:30 6 THE COURT: We are here pursuant to a motion to

09:40:33 7 withdraw as counsel in the United States of America versus

09:40:37 8 Brian Higgins, Case Number 3-18-cr-186.

09:40:46 9 I guess since we are doing this by phone, I would first

09:40:48 10 ask if everyone would enter their appearance, please.

09:40:53 11 MR. TABACCHI: Good morning, Your Honor. Brent

09:40:56 12 Tabacchi on behalf of the United States.

09:40:57 13 MR. CICERO: Tony Cicero for Brian Higgins.

09:41:03 14 THE COURT: And we also have --

09:41:05 15 MS. SACK: Your Honor --

09:41:06 16 THE COURT: Go ahead.

09:41:07 17 MS. SACK: Tamara Sack is present.

09:41:09 18 THE COURT: And, Mr. Higgins, you are here too,

09:41:12 19 right?

09:41:12 20 THE DEFENDANT: Yes, Your Honor, Brian Higgins.

09:41:15 21 THE COURT: As I indicated, we're here for the

09:41:18 22 purposes of dealing or entertaining the motion to withdraw as

09:41:26 23 counsel filed by Mr. Cicero.

09:41:29 24 Mr. Cicero, do you want to in any way, shape, or form

09:41:33 25 supplement that?

09:41:34 1 MR. CICERO: If the Court would like me to I can.

09:41:36 2 THE COURT: Well, just maybe a brief supplement.

09:41:41 3 MR. CICERO: Your Honor, Brian Higgins is a close

09:41:45 4 friend of mine of 10, 15 years now. I thought I could

09:41:51 5 separate the friendship and the attorney relationship, but

09:41:57 6 that's proving to be too difficult to do. Brian and I have

09:42:02 7 talked about it at length, and he's in agreement with this

09:42:06 8 request.

09:42:06 9 THE COURT: Mr. Higgins, is that correct?

09:42:10 10 THE DEFENDANT: That is correct, Your Honor.

09:42:11 11 THE COURT: It's also my understanding -- and,

09:42:17 12 Mr. Cicero, I guess this is again -- I am addressing you.

09:42:20 13 It's also my understanding that although you had initially,

09:42:28 14 I'm assuming, representing Mr. Higgins, one of the reasons is

09:42:33 15 the fact of your close relationship with him, that if the

09:42:36 16 Court grants the motion to withdraw, it's your belief that he

09:42:40 17 most likely would qualify for CJA representation?

09:42:48 18 MR. CICERO: That's correct, Judge.

09:42:49 19 THE COURT: Mr. Higgins, CJA representation

09:42:55 20 basically requires, for the Court to find that an individual

09:42:59 21 qualifies for that representation, must submit to the Court an

09:43:05 22 affidavit indicating basically their, well, for lack of a

09:43:10 23 better way of saying it, financial conditions. Once the Court

09:43:14 24 sees that affidavit, the Court can, if it finds, appoint

09:43:19 25 counsel under the CJA act. You understand?

09:43:24 1 THE DEFENDANT: Yes, Your Honor.

09:43:25 2 THE COURT: So before I can -- if I allow Mr. Cicero

09:43:30 3 to withdraw, before I can appoint, if you're not planning to

09:43:36 4 retain counsel and if you believe that you do or would after

09:43:40 5 your discussions, I'm assuming with Mr. Cicero, with regard to

09:43:44 6 this that you believe you would qualify for representation, I

09:43:48 7 would need to get as quickly as possible an affidavit from you

09:43:54 8 so that we can make that determination. Do you understand?

09:43:57 9 THE DEFENDANT: Yes, Your Honor, I do understand.

09:44:00 10 THE COURT: And is that what you wish to do?

09:44:01 11 THE DEFENDANT: Yes, Your Honor. I believe

09:44:06 12 Mr. Cicero has an affidavit that he's going to forward over to

09:44:10 13 me.

09:44:10 14 THE COURT: Yes, we need to get that done as quickly

09:44:12 15 as possible because, obviously, the Court is unable to take

09:44:16 16 any action until I get that document. Do you understand?

09:44:20 17 THE DEFENDANT: Yes, Your Honor.

09:44:21 18 THE COURT: Now, we also have with us here this

09:44:26 19 morning Ms. Sack who has --

09:44:31 20 MS. SACK: Yes, Your Honor.

09:44:31 21 THE COURT: It's my understandings, Ms. Sack, you've

09:44:34 22 heard the discussion here that we have had on the record. If

09:44:38 23 the Court allows Mr. Cicero to withdraw and if the Court finds

09:44:44 24 that Mr. Higgins does qualify under the CJA, you indicate that

09:44:52 25 you would be -- and you've come to the Court's assistance on

09:44:57 1 numerous cases, very difficult cases on a number of cases --

09:45:02 2 and that you would be willing to take on the representation of

09:45:08 3 Mr. Higgins; is that correct?

09:45:10 4 MS. SACK: Yes, Your Honor. And if I may?

09:45:13 5 THE COURT: Surely.

09:45:14 6 MS. SACK: Notwithstanding the fact that I've not --

09:45:16 7 there's not been a formal ruling on the withdrawal of counsel

09:45:21 8 and the appointment of CJA counsel, Mr. Higgins and I have

09:45:25 9 established contact, and we have discussed his case and we've

09:45:30 10 introduced ourselves to one another.

09:45:32 11 THE COURT: Great.

09:45:32 12 MS. SACK: So it would be my hope that in the event

09:45:39 13 that this does go through, that it would be, for lack of a

09:45:43 14 better word, a seamless transition. Thank you.

09:45:46 15 THE COURT: The Court is hoping so too. But the

09:45:50 16 Court does need to follow certain rules, and in order for me

09:45:56 17 to follow certain rules, I need things to rule on.

09:46:03 18 So I think, Mr. Cicero and Mr. Higgins, you understand

09:46:06 19 what the Court needs?

09:46:08 20 MR. CICERO: That's correct.

09:46:08 21 THE DEFENDANT: I'm clear. Yes, Your Honor.

09:46:10 22 THE COURT: And it's been here indicated upon the

09:46:14 23 record that Ms. Sack is willing, able, and ready to take up

09:46:18 24 representation if the Court does grant the motion and approve

09:46:22 25 the CJA representation.

09:46:27 1 So -- well, first, Mr. Tabacchi?

09:46:34 2 MR. TABACCHI: Yes, Your Honor.

09:46:34 3 THE COURT: Do you have anything you want to add?

09:46:36 4 MR. TABACCHI: Not at this time, Your Honor. Thank

09:46:38 5 you.

09:46:39 6 THE COURT: So here's what I'm going to do. I'm

09:46:42 7 going to take the matter under consideration. As quickly as I

09:46:49 8 receive the affidavit, which my understanding is going to be

09:46:51 9 forwarded immediately by Mr. Cicero to Mr. Higgins, Mr.

09:46:56 10 Higgins will fill it out, and I'm assuming it should be -- is

09:47:02 11 it to come back to you, Mr. Cicero?

09:47:05 12 MR. CICERO: I'll file it, Judge.

09:47:07 13 THE COURT: If you'll file it, that will get it to

09:47:09 14 us. And then based upon that and assuming, making an

09:47:13 15 assumption here --

09:47:15 16 MS. PENSKI: Excuse me, Your Honor?

09:47:16 17 THE COURT: Yes.

09:47:19 18 MS. PENSKI: Excuse me, Judge.

09:47:22 19 Tony, if you could forward that directly to me because

09:47:23 20 that document should be placed under seal. Once the defendant

09:47:27 21 gets it filled, forward it to me, and I will receipt it.

09:47:29 22 MR. CICERO: I will do that, Liz.

09:47:29 23 THE COURT: Thank you, Elizabeth.

09:47:31 24 The Court, although it doesn't like to pre-judge

09:47:34 25 anything, I am assuming that there won't be any problem in the

09:47:37 1 affidavit nor the appointment of CJA counsel; so, therefore,
09:47:43 2 upon that receipt and upon approval, the Court will grant
09:47:50 3 Mr. Cicero's motion to withdraw and appoint Ms. Sack as
09:47:55 4 Mr. Higgins' representative.
09:47:57 5 So at this point in time I will be conditionally granting
09:48:02 6 Mr. Cicero's withdrawal and conditionally appointing Ms. Sack.
09:48:09 7 However, all of these things are conditioned upon the
09:48:12 8 successful filing and approval by the Court of the affidavit.
09:48:19 9 Any questions?
09:48:22 10 MS. SACK: No, Your Honor. Thank you.
09:48:24 11 MR. CICERO: No, Your Honor. Thanks.
09:48:25 12 THE COURT: Mr. Higgins, do you got any questions?
09:48:28 13 THE DEFENDANT: No, Your Honor.
09:48:28 14 THE COURT: I want to thank you all for making
09:48:33 15 yourselves available. And I promise you as quickly as you get
09:48:37 16 your job done, I will do mine. Thank you. Have a good day.
09:48:44 17 MS. SACK: Thank you, Your Honor.
09:48:48 18 (Proceedings concluded at 10:47 a.m.)
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1 CERTIFICATE OF REPORTER

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3 I, Mary A. Schweinhagen, Federal Official Realtime
4 Court Reporter, in and for the United States District Court
5 for the Southern District of Ohio, do hereby certify that
6 pursuant to Section 753, Title 28, United States Code that the
7 foregoing is a true and correct transcript of the
8 stenographically reported proceedings held in the
9 above-entitled matter and that the transcript page format is
10 in conformance with the regulations of the Judicial Conference
11 of the United States.

12

13 s/Mary A. Schweinhagen

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October 9, 2020

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MARY A. SCHWEINHAGEN, RDR, CRR
FEDERAL OFFICIAL COURT REPORTER

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